IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 29201 of 2007(B)

PETITIONERS:

1. **TUFAIL AHAMED,**
   S/O. LATE A.S.AHAMED SAHIB, AGED 23 YEARS,
   RESIDING AT ASHA MANZIL, T.B.ROAD, PALAKKAD.

2. **TASIF AHAMED,**
   S/O.A.S.AHAMED SAHIB, AGED 19 YEARS,
   RESIDING AT ASHA MANZIL, T.B.ROAD, PALAKKAD.

3. **AYISHA MALIKA,**
   D/O LATE A.S.AHAMED SAHIB, AGED 22 YEARS,
   RESIDING AT ASHA MANZIL, T.B.ROAD, PALAKKAD.

4. **MRS. SAFIYA AHAMED SAHIB,**
   W/O LATE A.S.AHAMED SAHIB, AGED 51 YEARS,
   RESIDING AT ASHA MANZIL, T.B.ROAD, PALAKKAD.

5. **BADEERUL SAMAN, S/O LATE A.S.SULAIKHA,**
   AGED 50 YEARS, RESIDING AT CHEMBAKASSERRY,
   ALUVA, ERNAKULAM DISTRICT.

6. **ZANEERNA A.A., D/O LATE A.S.SULAIKA,**
   AGED 36 YEARS, RESIDING AT CHEMBAKASSERRY,
   ALUVA, ERNAKULAM DISTRICT.

7. **A.S.BADARUNNEESSA, W/O.M.S.UMMER SAHIB,**
   AGED 67 YEARS, RESIDING AT 9/46, SENGUPTA STREET,
   COIMBATORE.

8. **A.S.RASHEEDA, W/O.S.A.MOHAMED HUSSAIN,**
   AGED 63 YEARS, RESIDING AT MANJAKULAM ROAD,
   PALAKKAD.

BY ADV. SMT.M.A.ZOHRA

W.P.(C). NO. 29201/2007:

RESPONDENTS:
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1. **STATE OF KERALA- REPRESENTED BY THE SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE PALAKKAD MUNICIPALITY, REPRESENTED BY ITS SECRETARY, PALAKKAD MUNICIPALITY, MUNICIPAL BUILDINGS, PALAKKAD.**

BY SR. GOVT. PLEADER SRI. K.J. MOHAMMED ANZAR,
SRI.V.CHITAMBARESH, SC, PALAKKAD MUNICIPALITY,
ADV.SRI.T.C.SURESH MENON,
ADV.SRI.JIBU P THOMAS,
ADV.SRI.P.S.APPU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

W.P.(C). NO.29201/2007-B:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGMENT DTD. 13/03/2007 IN W.P.(C). NO. 28945/2006 OF THIS HONOURABLE COURT.

EXT.P.2: COPY OF THE APPLICATION DTD. 14/06/2007 SUBMITTED BY THE PETITIONERS BEFORE THE R.2. MUNICIPALITY.

EXT.P.3: COPY OF THE FORM FOR DEVELOPMENT CERTIFICATE ISSUED TO THE PETITIONERS BY THE R.2. DTD. 18/01/2005.

EXT.P.4: DEVELOPMENT CERTIFICATE ISSUED BY THE R.2. TO THE PETITIONERS, 94 CENTS DTD. 19/04/2006.

EXT.P.5: COPY OF THE COMMERCIAL LAY OUT SKETCH APPENDED TO EXT.P.4.

RESPONDENT'S EXHIBITS:

EXT.R2.A: COPY OF THE RESOLUTION NO. PW6-8875/07 DTD. 09/08/2007.

EXT.R2.B: COPY OF THE JUDGMENT IN W.P.(C). NO. 26488/2007-HIGH COURT OF KERALA, ERNAKULAM DTD. 05/09/2007.

//TRUE COPY//

prv.

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 29201 of 2007

Dated this the 20th day of November , 2007

JUDGMENT

Petitioners 1 to 4 ,7 & 8 were petitioners in W.P.(C) No.28945 of 2006 which was disposed of by me on 13.3.20078 by Ext.P1 judgment. Petitioners 5 and 6 are legal heirs of one smt.A.S.Sulekha, who was the 5th petitioner in that Writ Petition. W.P.(C) No.28945/2006 was filed by the petitioners therein seeking quashment of Clause No.3 of Ext.P3 development certificate issued by the 2nd respondent Palakkad Municipality in respect of 2.4 acres of land in Survey Nos. 837, 840 and 841 of Palakkad Village. On the terms of the above clause No.3, 94 cents of land belonging to the petitioners and forming part of the above mentioned 2.4 acres is to be kept reserved for the transportation purposes of the Municipality.

2. Under Ext.P1 judgment clause No.3 of Ext.P3 development certificate was quahsed with effect from 31.3.2007. The request of the petitioners in this writ petition is that a fresh development certificate be issued deleting clause No.3 in Ext.P3 or in the alternative issue development certificate in respect of 94 cents of land, which is

seen reserved for transportation purposes as per Ext.P3. The petitioners point out that Ext.P1 judgment has attained finality and that the application for review of Ext.P1 and further application for clarification of Ext.P1 were declined by this court. The petitioners submit that as per Ext.P2 dated 14.6.2007, they submitted an application for development certificate in terms of Ext.P1 judgment. In spite of that application and two lawyer notices issued to the Municipality, there has been no favourable response from the side of the Municipality. On these averments, the petitioners pray for the following reliefs;

> "i). To issue a writ of mandamus or any other appropriate writ, order or direction, directing the 2nd respondent Municipality to issue Development Certificate in respect of the 94 cents of land whose reservation stands quashed with effect from 3`1.3.2007 as made clear by this Hon'ble Court vide orders in I.A No.10349/2007 dated 24.8.2007 and Ext.P`1 judgment dated 13.3.2007 and as applied for by Ext.P2 within 2 weeks or such other appropriate time fixed by this Hon'ble Court.
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> ii). Issue a writ of Mandamus or any other appropriate writ, or direction, directing the 2nd respondent Palakkad Municipality to issue development certificate at the earliest possible, at the most within 2 weeks as the reservation is quashed with effect from 31.3.2007 and 6 months have already passed by;"

3. The 2nd respondent Municipality has filed a counter affidavit. It is contended that Ext.P3 development certificate was issued by the Municipality in terms of the Municipality Act and the Municipality Building Rules. Ext.P3 is even now in currency except for the circumstance that clause NO.3 in Ext.P3 has been deleted. According to the Municipality, there is no provision in the Act or the Rules for issuing more than one development certificate. It is also contended that one of the prayers in Ext.P1 was that the Municipality be directed to issue another development certificate. This court did not grant that prayer and there is no direction in Ext.P1 for issuance of another development certificate in respect of the property which requires any compliance by the Municipality. It is further contended that the Municipality's council has passed Ext.R2 (a) resolution by thumping majority that the 94 cents of property belonging to the petitioners along with the properties of others should be acquired for the purpose of establishing a lorry stand and a bus stand. It is also pointed out that though Ext.R2(a) resolution was challenged by another property owner, the same was dismissed by this court as premature and Ext.R2 (b) judgment passed by this court in W.P.(C) No.26488/2007 is relied on in this context.

4. To the above counter affidavit, the petitioners have filed a

detailed reply affidavit. Ext.P3 form of development certificate is produced along with this reply affidavit. It is pointed out that development certificate is appended with commercial lay out plan, in which also yellow lines were drawn over the reserved area demarcating it under the caption "land for transportation". The petitioners submit that in compliance with the conditions other than the condition No. 3 in Ext.P3 road was constructed and handed over to the Municipality. Drainages were constructed. It is after all these works are carried out and on inspection that the development certificate marked as Ext.P6 in Ext.P1 was issued on 19.4.2006. A copy of the commercial lay out containing reservation clause is also produced as Ext.P5. It is pointed out that after Ext.P1 became final, the petitioners submitted fresh plan for 94 cents of land with Ext.P2 application so as to have the same approved without the yellow over line tampering and demarcated by words "land for transportation". The petitioners claim that it is clear from Exts.P4 and P5 that the work has been completed as per the specifications. About two acres of land has been utilised for internal roads drainages, transformer yard, bell mouths, etc. These roads and drainages after construction have also been surrendered to the Municipality by requisite surrender deeds apart from 50 cents of land utilised for the construction of bye pass

and handed over as required by the conditions imposed in Ext.P3. It is pointed that it is after all these and awaiting for three months after Ext.P1, that submitted Ext.P2 as envisaged in Rule 20(g) of the Kerala Municipality Act 1999. The Municipality is bound to issue as per Rule 22 (2) and appendix – G, the development certificate for the reserved area of 94 cents whose reservation stands quashed with effect from 31.3.2007. In stead of that, the Municipality is trying to mislead this court. The present request is for development certificate relating to 94 cents in respect of which no development certificate has been issued already. It is highlighted that the findings in Ext.P1 will justify the above relief also. The reply affidavit goes on to refute the contentions based on the proposed acquisition of land. It is not for the Municipality to decide whether the land should be acquired for any public purpose invoking the urgency clause. The Municipality can only request the Government for acquisition. Referring to clause No. 2 of Ext.R2(a), which provides that a sum of Rs.40 Lakhs has been provided for in the budget of the Municipality for the year 2007-08, it is contended that the said clause is utter falsehood. It is then submitted that the area which is seen excluded under Ext.R2(a) (0.1426 Hectares) includes 50 cents of land surrendered by the petitioners freely for the purpose of Melamuri – T – B road town bus

stand, bye-pass as per clause 2,4 and 5 of Ext.P3. As regards Ext.R2 (b), it is pointed out that the same does not pertain to the petitioners' property. Ext.R2(b) does not in any event decide any issue.

5. I have heard the submissions of Smt. M.A.Sohara, the learned counsel for the petitioners and those of Sri.V.Chithamberesh, the learned Standing Counsel for the Municipality. The contentions raised by the Municipality, in my opinion, are too technical for receiving the acceptance by this court. Ext.P1 judgment has attained finality. The Municipality cannot resist reliefs sought for on the reason that the Municipality intends to acquire 94 cents of property not covered by Ext.P3 certificate for transportation purposes. Till this moment the notification under Section 4 (1) of the Land Acquisition Act has not promulgated. The petitioners are entitled to have a development certificate in respect of 94 cents of land in question in the light of ext.P1 judgment and the order passed in I.A. No.10349/2007.

The result is that the writ petition will stand allowed. The 2nd respondent Municipality is directed to issue development certificate in respect of 94 cents covered by Ext.P1 judgment as applied for by Ext.P2 within three weeks of receiving a copy of this judgment to the

petitioners. It is however made clear that the observations in Ext.P1 judgment as well as in the orders in I.A. No.10349 and 10350/2007 regarding the initiation of Land Acquisition Proceedings by the Municipality will continue to operate.

PIUS C. KURIAKOSE,
JUDGE.

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